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STATUTE.

Supreme Court of the United States.

OCTOBER TERM, 1960.

No. 358.

LAUREANO MAYSONET GUZMAN,
Petitioner,

v.

RAMON LUIS PICHIRILO,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

Opinion of the Court of Appeals.

The opinion of the Court of Appeals, which is printed as an appendix to the petition (Pet. 15-21), has now been reported at 290 F. 2d 812, and at 1961 A.M.C. 1588.

Questions Presented.

Respondent agrees that Question A 1 as stated by petitioner should be answered in the affirmative, but urges that it does not state the issue presented by his petition.

Respondent submits that petitioner's Question A 2 presents the basic issue for the consideration of this Court, *provided* it is understood that the system of longshoremen's compensation insurance involved makes compensation the longshoreman's exclusive remedy against his employer. 11 L.P.R. A. c. 1, sec. 21.

Petitioner also asks "whether the longshoreman's right to a seaworthy vessel is extinguished by his employer becoming a demise charterer." Respondent would rephrase this question thus: "May the longshoreman's recovery from his employer for injury caused by unseaworthiness be limited by a validly applicable Workmen's Compensation Act?"

Statement of Case.

Respondent adds to petitioner's statement only that the shackle which broke was a "new" shackle (R. 40). There is no suggestion that it had been installed prior to the commencement of the charter, five years earlier. Petitioner does not attack the Court of Appeals' statement that the unseaworthy shackle had been furnished by the charterer "recently" (290 F. 2d 812, 813).

We emphasize that petitioner's coming under the care of the State Insurance Fund of Puerto Rico, and his final award of compensation thereunder, were not only alleged as an affirmative defense (Pet. 5, R. 10), but were alleged in the libel (R. 4) and admitted in petitioner's own testimony (R. 14).

Argument.

A. The Opinion Below does Not Conflict with Opinions of Other Circuits.

The First Circuit's opinion below fully accords with those of other circuits, as an examination of the relevant cases will demonstrate.

(1) *Burns Brothers* v. *The Central R.R. of New Jersey*, 202 F. 2d 910 (2d Cir. 1953), expressed an accepted principle of maritime law: A vessel is liable in rem for a col-

lision caused by the negligent act of the demise charterer even though the general owner out of possession is not liable *in personam;* but, as the opinion shows (202 F. 2d at 911), the demisee remained so liable. The instant case is quite different. Here the demisee (whose fault would otherwise cast the ship *in rem*) had been statutorily exempted from any *in personam* liability to petitioner beyond that created by the Puerto Rican Compensation Act.

(2) *Cannella* v. *Lykes Bros. S.S. Co.*, 174 F. 2d 794 (2d Cir.), *cert. denied* 338 U.S. 859 (1949), is equally in accord with the opinion below. In *Cannella* the longshoreman had been employed by an independent stevedore under contract to the demise charterer's operating agent. The injury resulted from an unseaworthy condition created *before* the charter period began, and the shipowner was therefore held liable.* However, in the instant case the unseaworthiness arose *during* the charter period; in *Cannella* the Second Circuit agreed that such unseaworthiness could not be attributed to an owner out of possession and control.

(3) Despite what petitioner says in his brief, *Noel* v. *Isbrandtsen Co.*, 287 F. 2d 783 (4th Cir. 1961), does not conflict with the opinion below. The decision in *Noel* clearly states that, if no one is liable *in personam*, the vessel may not be made liable *in rem* to the libelant, whether by reference to the fiction of personification or otherwise.

(4) Petitioner relies most heavily on *Grillea* v. *United States*, 232 F. 2d 919 (2d Cir. 1956), as evidence of con-

*To be sure, the First Circuit, in *Vitesi* v. *Bulbos Shipping Co.*, 163 F. 2d 286 (1st Cir. 1947), held that the owner who had demised the vessel was not liable for unseaworthiness whenever occurring; but in its opinion in the instant case, 230 F. 2d 812, 813-814, the First Circuit recognized that under the *Cannella* decision there should perhaps be a limitation placed upon the *Vitesi* holding.

flict between the circuits. We urge that this view of *Grillea* ignores both the facts of that case and subsequent interpretations which the Second Circuit itself has put on it. In *Grillea* the Court emphasized the reliance of its opinion on the charterer's written agreement to indemnify the general owner against liens arising out of the operation of the vessel. There is no specific indemnity agreement in the instant case.

In any event, whatever force *Grillea* might have had when it was written has since evaporated. It is no longer regarded as law even in the Second Circuit. Petitioner errs when he argues (Pet. 10) that until the present decision "it was obvious that *Grillea* was the law." In *Bennett* v. *The Mormacteal and Moore-McCormack Lines, Inc.*, 160 F. Supp. 840 (E.D. N.Y. 1957), *aff'd per curiam* 254 F. 2d 138 (2d Cir. 1958), the Court, denying liability of a vessel *in rem* to a longshoreman where the owner-stevedore in possession and control was protected from further liability by the Longshoremen's and Harbor Workers' Compensation Act, noted the "great stress" which Judge Hand had placed on "the written contract of indemnity in fixing the liability on the owner of the vessel for any liens incurred during its charter." The decision of the District Court was affirmed *per curiam* by the Court of Appeals on the opinion below.*

Most recently, in *Pedersen* v. *The Bulklube*, 170 F. Supp. 462 (E.D. N.Y. 1959), *aff'd per curiam* 274 F. 2d 824 (2d Cir.), *cert. denied* 364 U.S. 814 (1960), a District Court again explored the *ratio decidendi* of the *Grillea* decision, and noted once more Judge Hand's emphasis of the indemnity agreement in *Grillea*.

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*See also *Smith* v. *S.S. Mormacdale*, 196 F. 2d 849 (3d Cir.), *cert. denied* 345 U.S. 966 (1953); *Samuels* v. *Munson S.S. Line*, 63 F. 2d 861 (5th Cir. 1933).

"Neither Judge Hand nor Judge Abruzzo [in *Bennett* v. *Mormacteal, supra*] explained the significance of a contract of indemnity between a 'guilty' charterer and an 'innocent' shipowner in establishing liability *in rem* in the vessel where the charterer and the owner are not otherwise personally liable. . . . Although at a loss to understand the theoretical significance of [the indemnity agreement], I conclude, in the light of the decision in *Bennett*, that *Grillea* does not sustain the position which libellant advances. In any event, it would be strange logic to hold that a vessel, owned by one who might be otherwise liable in tort but who is within the protection of the Compensation Act, cannot be reached in a proceeding *in rem*, and at the same time to hold, as libellant urges here, that a vessel owned by a wholly innocent third party can be held liable where, as here, there is no contract of indemnity, and the negligence causing the injury is solely attributable to the employer protected by the Compensation Act." 170 F. Supp. at 466-467.

This opinion, too, was affirmed *per curiam* by the Court of Appeals, "on the opinion of" the trial Court. The affirmations of *Bennett* v. *The Mormacteal* and *Pedersen* v. *The Bulklube* clearly indicate that, if *Grillea* were to arise today, the Second Circuit would not follow that opinion's incorrect reasoning.

B. The Decision Below Does Not Conflict with Applicable Decisions of This Court.

We agree that under suitable circumstances *in rem* liability may be imposed upon a vessel even though the owner is not liable *in personam*. It will serve no purpose

now to discuss the various contexts in which that situation results. Absent the owner's *in personam* liability, *in rem* liability normally results when the owner has entrusted the control of the vessel to another voluntarily, as in the case of a demise charter, or has entrusted the navigation to another even involuntarily, as in the case of a compulsory pilot.* But, as already discussed, *Pedersen* v. *The Bulklube, supra*, pp. 4-5, *in rem* liability may not flow from the act or failure of a demise charterer who has, as here, a personal statutory defense.

The decision of the Court of Appeals in the instant case does not conflict with any of the cases cited by petitioner at page 11 of the petition. The only one of those cases which factually approaches the instant case in the slightest degree is *Crumady* v. *Joachim Hendrik Fisser*, 358 U.S. 423 (1959); but there the charter was a time charter and the owner retained possession and control of the vessel.† There was thus no issue as to the relative responsibilities of a general owner and an owner *pro hac vice*.

Petitioner has admitted the existence of exceptions to the imposition of liability *in rem* (Pet. 11), but says that the First Circuit "has applied the exceptions where they

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*Forfeiture of the vessel for piracy is not the imposition of liability for a tort, but is the imposition of a sanction against criminal violation of law.

†Petitioner incorrectly asserts (Pet. 11) that the vessel had been chartered under a demise. The transcript of the record of that case in this Court (Nos. 61 and 62, October Term, 1958) shows that libelant alleged that the owners operated the ship through their agents, servants or employees (Art. 11 of the libel; R. 9). The answer admitted ownership, and in article 11 of the answer admitted that respondent operated the vessel (with the usual additional allegation excepting those parts of the vessel which had been turned over to the stevedore and the longshoremen) (R. 12). The cross-petition for writ of certiorari in No. 62 states that the stevedoring contract was made by the time charterer (pp. 3, 5).

are inapplicable, because the instant case involved no exoneration . . ." (Pet. 12). But there was, indeed, exoneration here: the Workmen's Accident Compensation Act of Puerto Rico, 11 L.P.R.A. c. 1, sec. 21, provides that, when the employer has insured his workmen under the Act, compensation is the exclusive remedy against the employer. *Queen of the Pacific*, 180 U.S. 49 (1901), and *The Western Maid*, 257 U.S. 419 (1922), therefore directly support the decision below.

Petitioner also cites eight decisions of this Court holding that a shipowner cannot contract away or delegate his duty to furnish or maintain a seaworthy vessel (Pet. 12). None of the cited cases treats the relative responsibilities of a general owner and an owner *pro hac vice*. None of them holds that the general owner of a demised vessel continues to bear the obligation of ensuring seaworthiness of the vessel after the demise period has begun. Indeed, none of those cases except *Crumady* deals with a charter at all; and in *Crumady* the charter arrangement was a time charter, not a demise (as pointed out, *supra*, p. 6 and footnote).

The decision below in no way departs from the principles laid down in *Seas Shipping Co., Inc.*, v. *Sieracki*, 328 U.S. 85 (1946). It holds merely that the general owner is not responsible for unseaworthiness arising after the demise, and that, where the demisee has a personal statutory exemption from liability, the vessel may not be seized and condemned *in rem* to satisfy a claim based on such unseaworthiness.

To subject M/V Cabo to seizure and condemnation *in rem* in this case would be to apply the property either to a liability for which the general owner bears no responsibility or to a liability from which the demise charterer, by valid enactment, has been exempted. See *Continental Grain Co.* v. *Barge FBL-585*, 364 U.S. 19, 23-24 (1960);

Consumers Import Co. v. *Kabushiki Kaisha Kawasaki Zosenjo*, 320 U.S. 249, 254 (1943); *The City of Norwich*, 18 U.S. 468, 503 (1886).

C. The Court of Appeals did Not Deviate from This Court's Accepted Principles in Holding that the Cabib was Demised to the Stevedore-Employer.

The Court of Appeals here reversed the District Judge on a ruling of law. The District Court had said (R. 57): "The evidence is so meagre in this respect that I can find no lawful basis for holding that the vessel was under a demise charter party to Bordas & Company." In other words, the District Court ruled that the evidence did not suffice to support a finding of a demise. The ruling was thus equivalent to a directed verdict in a jury case. We urge that, because the District Court was wrong as a matter of law, the Court of Appeals was free to correct the error. Contrary to petitioner's contention (Pet. 13), there was no conflicting evidence. All testimony to the method of operation of the Cabib came from one witness, Bordas (R. 49-55). His evidence being inherently credible and undisputed, the finding of the existence of a demise charter must follow as a matter of course upon reversal of the trial Court's erroneous ruling as to the sufficiency of the evidence. (See opinion below, 290 F. 2d, at 813, n. 1.)

There is no conflict here with *McAllister* v. *United States*, 348 U.S. 19 (1954). The Court of Appeals, after reversing the District Court's error, properly made the correct finding. In the face of such uncontradicted and unquestioned evidence, a remand to the District Court with instructions to make the same finding would be a useless, time-wasting formality.

Conclusion.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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